

Not For Publication-For Upload

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

SUSAN CARLINS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 2003-110
	)	
THE BOARD OF DIRECTORS OF GALLOWS	)	
POINT CONDOMINIUM CORPORATION, GALLOWS	)	
POINT MANAGEMENT CORPORATION, GALLOWS	)	
POINT DEVELOPMENT CORPORATION,	)	
PILLSBURY SOUND LAND COMPANY,	)	
	)	
Defendants,	)	
	)	
v.	)	
	)	
GALLOWS POINT CONDOMINIUM	)	
ASSOCIATION,	)	
	)	
Nominal Defendant.	)	
_____	)	

ATTORNEYS:

**Richard Dollison, Esq.**  
St. Thomas, U.S.V.I.  
*For the plaintiff,*

**Gregory Hodges, Esq.**  
St. Thomas, U.S.V.I.  
*For the defendants*

**Steven Hogroian, Esq.**  
St. John, U.S.V.I.  
*For the nominal defendant Pillsbury Sound Land Company, Inc.*

MEMORANDUM

Defendants, the Board of Directors of Gallows Point  
Condominium Corporation, Gallows Point Management Corporation,

Gallows Point Development Corporation and Pillsbury Sound Land Company, all move the Court for summary judgment. Plaintiff, Susan Carlins, moves to 1) stay consideration of the summary judgment motion to allow the deposition of Coastal Zone Management ["CZM"] personnel, and 2) for leave to file a sur-reply to the motion for summary judgment. For the reasons discussed below, I will grant both the motion to stay and the motion to file a sur-reply.

#### **Motion for Stay**

Carlins requests a stay of consideration of the fully briefed summary judgment motion to allow for the possibility of taking the document deposition of CZM personnel. In her motion, she attaches an affidavit by William Rohring, Assistant Director of CZM, stating that the CZM documents -- which defendants objected to as hearsay in the November 21, 2003 hearing -- were authentic copies of records from his department. At the same November 21 hearing, defendants were directed to review these documents. In their opposition, defendants state they have done so, but continue to object to their admissibility based on relevance. Carlins counters that the documents are clearly relevant because they present important factual disputes regarding the underlying issue of the status of the reserved

parcels in the condominium development.

Federal Rule of Civil Procedure 56(f) allows a party to request a stay of consideration of summary judgment if she can show by affidavit that she is unable to respond to the moving party's summary judgment arguments. Although Carlins does not specifically cite this rule as authority for her request,<sup>1</sup> she does rely on Magistrate Judge Barnard's Order of May 24, 2004, that "counsel will review CZM documents in an effort to reach a stipulation with respect to authenticity, failing which deposition testimony will establish authenticity."

Inasmuch as the defendants have declined to stipulate to the documents' authenticity, plaintiff is entitled to establish their authenticity by deposition testimony. The request for a stay to accommodate that process is therefore justified and will be granted. Defendants' objection that the documents are irrelevant is premature and can be raised if and when the authenticity of the documents is established.

#### **Motion for Leave to File Sur-reply**

On August 27, 2004, Carlins filed a motion seeking leave to file a sur-reply on the ground that defendants' reply memorandum

---

<sup>1</sup> She also has not complied with the affidavit requirement of the rule and other parameters prescribed by case law.

raised issues not addressed in its original motion, and that the proposed sur-reply addresses only those new issues. The proposed sur-reply is attached as Exhibit A to the motion. Defendants argue that this attachment itself in violation of Local Rule of Civil Procedure 7.1(g). Rule 7.1(g) requires that "[o]nly a motion, a response in opposition, and a reply may be served on counsel and filed with the court; further response or reply may be made only by leave of court obtained before filing (counsel will be sanctioned for violation of this limitation)."

Defendants would compare LRCi7.1(g) with LRCi 15.1 (specifying that a proposed amended complaint should be attached to the motion to amend) and attempt to argue that the absence of this language in Rule 7.1(g) absolutely prohibits the attachment of the proposed sur-reply. There is no basis, logical or otherwise, to conclude that the express requirement of one rule to attach an amending complaint implies, by the absence of such an express requirement in another rule, the prohibition of attaching a proposed sur-reply.

Moreover, for the defendant to be able to agree or object to the proposed amendment, he needs to know exactly what the plaintiff is seeking to add or change to her complaint. It is thus essential for the proposed language to be attached to plaintiff's motion. The complaint, after all, sets forth claims

and issues the defendant must defend against and determines the course of the litigation.

Dispositive motions, on the other hand, serve the vastly different function of terminating or narrowing the scope of the litigation. Local Rule LRCi7.1(g) merely keeps the playing field even by allowing the non-movant to seek to sur-reply to arguments raised for the first time in the movant's reply to the non-movant's response in opposition to the issues raised in the motion. Attaching a proposed sur-reply to arguments raised for the first time in the movant's reply may or not be helpful to the Court. Accordingly, the non-movant is neither required nor prohibited from attaching her proposed sur-reply to her motion for leave to file it.

I will grant Carlins leave to file the sur-reply. An appropriate order follows.

**ENTERED THIS 29th day of November, 2004.**

**FOR THE COURT:**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

Not For Publication

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

SUSAN CARLINS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 2003-110
	)	
THE BOARD OF DIRECTORS OF GALLOWS	)	
POINT CONDOMINIUM CORPORATION,	)	
GALLOWS POINT MANAGEMENT	)	
CORPORATION, GALLOWS POINT	)	
DEVELOPMENT CORPORATION, PILLSBURY	)	
SOUND LAND COMPANY,	)	
	)	
Defendants,	)	
	)	
v.	)	
	)	
GALLOWS POINT CONDOMINIUM	)	
ASSOCIATION,	)	
	)	
Nominal Defendant.	)	
_____	)	

ATTORNEYS:

**Richard Dollision, Esq.**  
St. Thomas, U.S.V.I.  
*For the plaintiff,*

**Gregory Hodges, Esq.**  
St. Thomas, U.S.V.I.  
*For the defendants,*

**Steven Hogroian, Esq.**  
St. John, U.S.V.I.  
*For the nominal*

ORDER

For the reasons stated in the attached memorandum of even  
date, it is hereby **ORDERED** that the plaintiff's motion to stay

*Carlins v. Gallows*  
Civil No. 2003-110  
Order  
Page 2

proceedings and plaintiff's motion for leave to file sur-reply  
are **GRANTED**.

**ENTERED this 29th day of November, 2004.**

**FOR THE COURT:**

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas K. Moore  
District Judge

**ATTEST:**  
**WILFREDO F. MORALES**  
**Clerk of the Court**

**By:**\_\_\_\_\_  
**Deputy Clerk**

**Copies to:**  
Hon. G.W. Barnard  
Richard Dollison, Esq.  
St. Thomas, U.S.V.I.  
Gregory Hodges, Esq.  
St. Thomas, U.S.V.I.  
Steven Hogroian, Esq.  
St. John, U.S.V.I.  
Mrs. Jackson  
Mrs. Trotman  
Kristi Severance, Esq.